UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELILE ADAMS,

Petitioner,

v.

RAYMOND DODGE, et al.,

Respondents.

NO. 2:19-cv-1263 JCC

RESPONSE TO RESPONDENTS' RETURN TO SECOND AMENDED PETITION FOR WRIT OF *HABEAS CORPUS* AND MOTION TO DISMISS

I. FACTS

A. RESPONDENT DODGE ILLEGALLY ASSERTS JURISDICTION OVER PETITIONER'S CHILD, AS VENDETTA.

In 2014, Manuel Galindo, the father of Petitioner Elile Adams' then baby daughter Z. A.-G., initiated a parenting action against Ms. Adams in Whatcom County Superior Court ("Superior Court Parenting Action").[1] The Superior Court issued two Orders on January 13, 2015, each asserting its "jurisdiction over the child"; and a third Order on May 8, 2015, ruling

[1] Declaration of Elile Adams ("E. Adams Decl."), Ex. A

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

that "Ms. Adams is, and shall remain, [the] primary residential parent" for the child and awarding Mr. Galindo visitation ("Superior Court Parenting Order").[2]

Ms. Adams and Mr. Galindo adhered to the Superior Court Parenting Order until March of 2017.[3] Meanwhile, Respondent Nooksack Tribal Court Chief Judge Raymond Dodge developed a vendetta against Ms. Adams' father, George Adams.[4] Mr. Adams appeared before him on November 9, 2016, as a traditional spokesperson for Tribal Elder Margretty Rabang, who, according to the U.S. Department of Interior ("DOI") in late 2016, was unlawfully facing eviction pursuant to "invalid" orders issued by Respondent Dodge.[5] Mr. Adams spoke that day for Ms. Rabang because Respondent Dodge, as Nooksack Tribal Attorney in February 2016, caused the Tribe to disbar her lawyers of record, Galanda Broadman, PLLC[6]; and, as purported Chief Judge by late 2016, caused the firm's appearance notice for her to be "REJECTED" in clear violation of a September 21, 2016, Tribal Court of Appeals ruling allowing the firm to "practice before the Nooksack Tribal Court."[7] Mr. Adams shamed Respondent Dodge for his unethical behavior, speaking exclusively in his Lhéchelesem tongue.[8] It was then when Respondent Dodge established his vendetta against Mr. Adams, which he would fulfill against Ms. Adams and her child.[9]

On March 17, 2017, Ms. Adams sought a protection order against Mr. Galindo from the Tribal Court, given Mr. Galindo's history of physically and verbally abusing her, causing property damage to their former home together, expressing suicidal ideation, and threatening to

[2] *Id.*, Exs. B at 2, ¶2.5; C at 2, ¶3.5.
[3] E. Adams Decl., ¶4.
[4] *Id.*, ¶¶3, 12; Declaration of George Adams ("G. Adams Decl."), ¶3.
[5] Declaration of Gabriel S. Galanda ("Galanda Decl."), Ex. A.
[6] Mr. Galanda traveled from Seattle to Deming that day to represent Ms. Rabang but Nooksack police would not allow him in the courtroom. Galanda Decl., ¶2.
[7] *Id.*, Exs. B, C, D, E. The Nooksack Tribal Court of Appeals has since ceased to exist, after the Nooksack Tribe sued its own appeals court in October 2016 and enjoined it from further operation. *Id.,* Ex. L. As Tribal Attorney, Respondent Dodge caused former Tribal Court Chief Judge Susan Alexander to be "terminated," before replacing her as Chief Judge weeks later. *Id.*, Ex. E.
[8] E. Adams Decl., ¶¶3, 12; G. Adams Decl., ¶3
[9] *Id.*

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

take their child back to Mexico with him.[10] Respondent Dodge issued the temporary protection order.[11] Then, on March 30, 2017, Respondent Dodge, himself, initiated a second parenting action ("Tribal Court Parenting Action") and entered a "Parenting Plan, Visitation Schedule" Order ("Tribal Court Parenting Order").[12] Respondent Dodge *sua sponte* converted Ms. Adams' plea for domestic protection into a child custody action.[13] Tellingly, the caption of that order indicates it was not "Proposed by Mother[,] Father [or] Jointly"—it was proposed and entered by Respondent Dodge himself.[14] Respondent Dodge did so knowing his judgeship and orders were "invalid" at that time, according to DOI.[15]

That same day, Ms. Adams filed the Superior Court Parenting Order in the Tribal Court Parenting Action, objecting to Respondent Dodge's asserted jurisdiction.[16] Respondent Dodge knew or should have known that he also lacked jurisdiction to assert jurisdiction over Ms. Adams' daughter due to the pre-existing Superior Court Parenting Order, as a matter of Washington's Uniform Child Custody Jurisdiction and Enforcement Act, Chapter 26.27 RCW ("UCCJA"). RCW 26.27.211; RCW 26.27.041(b) (applying UCCJA to tribal courts). Respondent Dodge proceeded anyway, and now assumes the incorrect legal "opinion that the Court possessed the authority to modify a Whatcom County Superior Court order involving custody matters pertaining to minor child Z. A-G" without ever communicating with the Superior Court.[17] RCW 26.27.211; *In re Marriage of Susan C. and Sam E.*, 114 Wn. App. 766, 777, 60 P.3d 644 (2002).

[10] E. Adams Decl., ¶8.
[11] *Id.*, Ex. D.
[12] *Id.*, Ex. E.
[13] *See id.*
[14] *Id.* Respondents' assertion that "Petitioner herself initiated the child custody action in Nooksack Tribal Court that led to the criminal case against her" is a bold-faced lie. Dkt. # 25 at 5; E.Adams Decl., ¶9.
[15] Galanda Decl., Ex. A.
[16] E. Adams Decl., Ex. F.
[17] Galanda Decl., Ex. G at 6.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

The Whatcom County Superior Court recently ruled in the 2014 Superior Court Parenting Action that "this Court has never declined jurisdiction" and that Mr. Galindo and Ms. Adams' "appearance and participation in the Nooksack Tribal Court custody proceedings does not waive or divest this Court of its continuing and exclusive jurisdiction."[18] Declaring "that this Court retains exclusive, continuing jurisdiction over the custody of [Z. A.-G.] pursuant to the [UCCJA]," the Superior Court invalidated the Tribal Court Parenting Order.[19] Indeed, Respondent Dodge has lacked subject mater jurisdiction throughout the nearly three years of controversy that now culminates with Ms. Adams' *habeas corpus* petition.

B. RESPONDENT DODGE HAILS MS. ADAMS TO TRIBAL COURT ALMOST MONTHLY, FOR 31 MONTHS.

Since March 30, 2017, Ms. Adams has appeared before Respondent Dodge in either the Tribal Court Parenting Action or its related criminal matter **at least 21 times**.[20] He has issued no less than **twenty orders against her** in in the Tribal Court Parenting Action—many "*sua sponte.*"[21] Despite her March 30, 2017, jurisdictional objection, Ms. Adams generally adhered to both the Superior Court and Tribal Court Parenting Orders until January 2019, when her daughter "bec[ame] extremely emotional when it came time to leave for the exchanges" with Mr. Galindo, which Ms. Adams reported to Tribal authorities was due to "abuse of the child by her father."[22] Mr. Galindo last sought to visit Ms. Adams' daughter on February, 2, 2019; she has not heard anything from him since April 20, 2019, at 9:30 AM, when he last text messaged her

[18] E.Adams Decl., Ex. F.
[19] *Id.*
[20] *Id.* Ms. Adams was compelled to appear, and appeared, before Respondent Dodge almost monthly for nearly three years; on March 30, November 8, December 13, 2017, January 10, February 14, March 14, April 11, May 9, June 13, August 8, October 10, November 14, December 19, 2018, and January 9 and 30, March 6 and 14, and May 20, June 5, September 12, October 9 and November 1, 2019. Dkt. # 5 at 8-21, 42-45; E.Adams Decl., ¶12.
[21] *See generally* Dkt. # 25-2 at 8-21, 42-45.
[22] Dkt. # 25-2 at 53-54.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

about visitation.[23] As Ms. Adams now testifies: "This controversy has always felt like it could be titled, *Raymond Dodge v. Elile Adams*, but that is especially true since February of 2019."[24]

On February 19, 2019, Respondent Dodge requested that Nooksack police "investigate possible custodial interference violation(s) with regard to" Ms. Adams.[25] Three days later, Ms. Adams was cited with "TEN COUNTS" of custodial interference.[26] Ms. Adams was charged with four counts of custodial interference and one count of contempt of court on March 19, 2019, in *Nooksack Indian Tribe v. Elile Adams*, No. 2019-CR-A-004 ("Tribal Court Criminal Matter").[27] Ms. Adams appeared before Respondent Dodge on May 20, 2019, where she pleaded not guilty to all five counts and received a public defender; and on June 5, 2019 for a pre-trial hearing.[28] Respondent Dodge presided over both the Tribal Court Criminal Matter and Tribal Court Parenting Action for the next eight months, despite his appearance of impartiality given (a) his dispute with Ms. Adams' family and, more importantly, (b) his knowledge of facts from both the Tribal Court Parenting Action that he commenced and the requested criminal investigation he requested of her.[29]

On May 14, 2019, Ms. Adams filed a "Voluntary Non Suit of Elile Adams"[30] in the Tribal Court Parenting Action, submitting that: "During the time when I filed my original petition asking for [a protection order] the Nooksack Tribal Court was and is now nonfunctional.[31] This Tribal Court has neither subject matter jurisdiction, nor personal

[23] E.Adams Decl., ¶13.
[24] *Id.*
[25] *Id.* at 53.
[26] *Id.* at 62 (emphasis in original).
[27] *Id.* at 59-61.
[28] *Id.* at 42-45.
[29] Dkt. # 25-2 at 53.
[30] Ms. Adams has not had civil counsel in the Tribal Court Parenting Action since May 14, 2019, when her lawyer withdrew. E.Adams Decl., ¶16.
[31] Galanda Decl., Ex. A.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

jurisdiction over me, nor over Mr. Galindo, nor our child."[32] She was correct, insofar as Respondent Dodge never had subject matter jurisdiction—the Whatcom County Superior Court did, pursuant to the UCCJA.[33]

C. MS. ADAMS IS ARRESTED AND IMPRISONED BECAUSE WHILE SHE WAS ON CANOE JOURNEY SHE MISSED ONE COURT DATE, WHICH HER PUBLIC DEFENDER ATTENDED FOR HER.

From July 1 to 29, 2019, the Adamses participated and paddled in the Northwest Tribes' annual Canoe Journey, which culminated at Lummi Nation on July 29.[34] On July 11, 2019, Ms. Adams' public defender appeared before Respondent Dodge for Ms. Adams in a pre-trial hearing in the Tribal Court Criminal Matter because she was gone for Canoe Journey; Respondent Dodge threatened to "issue a warrant or her arrest" if she did not present herself to the Tribal Court by July 18, 2019.[35] On July 11 and 18, Ms. Adams was with her daughter and father away from Nooksack, taking part in preparations regarding a newly carved cedar canoe, Northern Quest, which they would soon paddle along the waters of the Puget Sound, to Lummi.[36] On July 19, 2019, Respondent Dodge issued a Warrant of Arrest against Ms. Adams for failure to appear.[37] The Adamses returned home, exhausted from Canoe Journey and unpacked, on July 29, 2019.[38]

The very next morning, July 30, 2019, while the Adamses were relaxing at home, which is situated on off-reservation Nooksack allotted lands, Tribal police officers arrived and arrested

---

[32] E.Adams Decl., Ex. G at 2.
[33] *Id.*, Ex. F.
[34] E.Adams Decl., ¶¶17-20; G. Adams Decl., ¶¶4-5; Lacey Young, *Nearly 100 Canoes Arrive at Lummi Nation – the Final Stop of Annual Tribal Canoe Journey*, BELLINGHAM HERALD (Jul. 26, 2019), *available at*: https://www.bellinghamherald.com/news/local/article233142846.html.
[35] Dkt. # 25-2 at 41. Respondent Dodge picks and chooses when Ms. Adams must personally appear in the Tribal Court Criminal Matter. *See id.* at 21 ("the Court informed Ms. Adams that her attendance . . . would not be required").
[36] E.Adams Decl., ¶¶17-20; *see also* G. Adams Decl., ¶¶4-5.
[37] Dkt. # 25-2 at 40.
[38] E.Adams Decl., ¶20; G. Adams Decl., ¶5

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

Ms. Adams.[39] By 11:12 a.m., a Nooksack officer transported a handcuffed Ms. Adams to the Whatcom County Jail, despite plainly lacking jurisdiction to detain or transport Ms. Adams beyond Nooksack allotted or trust lands.[40] *State v. Eriksen*, 25 P.3d 1079 (Wash. 2011). Whatcom County booked Ms. Adams into custody or "FTA Contempt" in the Tribal Court Criminal Matter, pursuant to a fee-for-service jailing agreement between the Nooksack Tribe and Whatcom County that does not assure prisoners any civil rights protections vis-à-vis each jurisdiction.[41] Whatcom County Sheriff's Deputy David Kimball commented to her: "I have never seen a charge like his before. It is a bogus charge."[42]

Ms. Adams spent two hours in an isolation cell, with her arms still handcuffed behind her back, causing her to experience carpal tunnel syndrome numbness, as well burning sensations of pain, before she was placed in cellblock "3K" with the general inmate population.[43] Twenty other women were in the same cell.[44]

Meanwhile, by 2:15 PM that same day, Respondent Dodge decided to finally rule on Ms. Adams' May 14, 2019, motion for "Voluntary Non Suit" in the Tribal Court Parenting Action, denying her request and explaining that "[o]n this date a warrant for Ms. Adams [sic] arrest in a pending criminal matter was executed. Ms. Adams is currently in custody."[45] Respondent

---

[39] *Id.* The facts of Nooksack officers' assault, battery, and false detention, arrest, and/or imprisonment of the Adams that morning are chronicled in the E.Adams Decl., ¶¶21-47, the G. Adams Decl., ¶¶6-10, and the Galanda Decl., ¶10, but those facts are not necessary to this Response.

[40] E.Adams Decl., ¶34; Dkt. # 25-2 at 38.

[41] Dkt. # 14; Galanda Decl., Ex. H. The federal Bill of Rights does not apply to prisoners like Ms. Adams while on Nooksack Indian country, and Whatcom County has no policy or procedure to ensure that prisoners accepted into its custody from a tribal jurisdiction have been afforded any constitutional protection. Dkt. # 14; *Talton v. Mayes*, 163 U.S. 376, 384 (1896) (within Indian country, the Fifth and Fourteenth Amendments do not apply to the actions of tribal governments)

[42] E.Adams Decl., ¶37.

[43] *Id.*, ¶¶38.

[44] *Id.*

[45] *Id.*, Ex. H.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

Dodge piled on a new Criminal Summons in the Tribal Court Criminal Matter that same afternoon, and had Nooksack police serve her with it at home the very next day.[46]

At 7:57 p.m. on July 31, 2019, Whatcom County Jail personnel released Ms. Adams after her father posted her $500.00 bail, ordering her to appear before the Nooksack Tribal Court in the Tribal Court Criminal Matter on August 21, 2019.[47] That same day, Whatcom County issued a $500.00 check to the Tribal Court, transferring Ms. Adams' bail monies—and thus her custody—to Respondents.[48] *Hensley v. Municipal Court*, 411 U.S. 345 (1973). Respondent Tribal Court Clerks Betty Leathers and Deanna Francis received, and control, Ms. Adams' bail monies.[49]

D. RESPONDENT DODGE DENIES MS. ADAMS' RIGHT TO COUNSEL; SUES MS. ADAMS

On August 7, 2019, Respondent Dodge caused an association notice filed by Mr. Galanda on behalf of Ms. Adams in the Tribal Court Parenting Action to be "REJECTED," denying Ms. Adams her right to civil counsel of her choosing, at her own expense.[50] Respondent Dodge also caused an association notice that Mr. Galanda filed in the Tribal Court Criminal Matter to be "REJECTED," further denying her right to counsel.[51] Both rulings further violated a September 21, 2016, Tribal Court of Appeals ruling allowing the firm to "practice before the Nooksack Tribal Court."[52]

On August 9, 2019, Ms. Adams filed a Whatcom County Superior Court tort lawsuit against Respondent Dodge in his personal capacity.[53] He answered that suit on September 17,

[46] *Id.* Ex. I; E.Adams Decl., ¶48. The Summons is not included in the "true and accurate copy of the Nooksack Court file" on file at Dkt. # 25-2. *Cf.* Dkt. # 25-2 at 2; *id.*, at 8.
[47] Galanda Decl., Ex. H.
[48] *Id.*; Dkt. # 25-2 at 22.
[49] Dkt. # 25-2 at 22.
[50] Galanda Decl., Ex. J.
[51] *Id.*, Ex. K.
[52] *Id.*, Ex. C at 2.
[53] *See* Dkt. # 25-2 at 15, ¶¶1-5.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

2019, and counterclaimed for libel against Ms. Adams because she told a local blog that "Dodge has made my life a living nightmare."[54]

By October 2, 2019, Ms. Adams moved to recuse Respondent Dodge from the Tribal Court Criminal Matter, citing her Superior Court suit against him and his counterclaim against her.[55] Although Respondent Dodge and Nooksack police excluded Mr. Galanda from entering the Courthouse with Ms. Adams or representing her on October 9, 2019, that day Respondent Dodge finally recused himself from the Tribal Court Criminal Matter, and Respondent Pro Tem Judge Rajeev Majumdar was assigned to preside over the matter.[56] On November 1, 2019, Ms. Adams appeared before Respondent Majumdar, who continued the case at her and the Prosecutor's request given this federal *habeas corpus* proceeding.[57]

E. NOOKSACK JUDICIARY REMAINS CORRUPT.

During the lifespan of this controversy, the following proclamations have been made about Respondent Dodge and the Nooksack Judiciary:

- On March 24, 2017, the National Indian Court Judges Association Board of Directors ("NAICJA") wrote Respondent Dodge while jettisoning him from the association:

> NAICJA does not view your Nooksack Tribal Court judicial appointment as valid. Further, while you have occupied the position of Chief Judge at Nooksack, proceedings do not appear to have been conducted in compliance with the federal [Indian Civil Rights Act] or fundamental tenets of due process at law. . . . NAICJA can only support members who are legitimate and comport with . . . core tenet[s] of tribal democracy and judicial integrity.[58]

- On April 10, 2018, the Washington State Bar Association ("WSBA") commented that the Nooksack "'justice system'" is "probably not worthy of that description."[59]

---

[54] E. Adams Decl., ¶¶48-50.
[55] Dkt. # 25-2 at 15, ¶¶1-5.
[56] *Id.* at 19-14; Galanda Decl., ¶14.
[57] *Id.* at 6.
[58] Galanda Decl., Ex. M.
[59] *Id.*, Ex. N.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

- On June 11, 2018, DOI expressed the United States' continued concern about the need for "respect for the rule of law" at Nooksack.[60]

- On March 9, 2018, Ninth Circuit Senior Judge Richard Clifton commented that Respondent Dodge and his civil RICO co-conspirators' record of "ignoring orders from the Tribe's own court of appeals which it said the rule of law had 'completely broken down' [and] withdrawing from the established appellate court" is "a record a tin-pot dictator of a banana republic might be proud of. " *Rabang v. Kelly*, No. 17-35427 (9th Cir. Mar. 9, 2018), Dkt. # 32.

- On July 31, 2018, this District Court rejected Respondent Dodge's contention that "'the cloud over the Tribe' has been lifted" by DOI's recognition of the Tribe on March 9, 2018, commenting that the "well documented" allegations against him and his co-conspirators "are highly concerning." *Rabang v. Kelly*, No. 2:17-cv-00088-JCC (W.D. Wash.), Dkt. # 166 at 8.

Today, there is no public indication that the Nooksack appellate court again exists; or if it does exist, that it is worthy of again being regarded as impartial.[61]

II. LAW AND ARGUMENT

A. PROPER RESPONDENTS

The federal Indian Civil Rights Act ("ICRA") provides that the writ of *habeas corpus* "shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe." 25 U.S.C. § 1303. In *Santa Clara Pueblo v. Martinez*, the U.S. Supreme Court recognized that Indian tribes, as sovereigns, possess immunity from suit and it held that, in light of such immunity, the ICRA does not "authorize the maintenance of suits against a tribe nor does it constitute a waiver of sovereignty." *Walton v. Pueblo,* 443 F.3d 1274, 1278 (10th Cir. 2006) (citing 436 U.S. 49, 59 (1978)). Additionally, "the ICRA does not create a

[60] *Id.*, Ex. O.
[61] *See* Galanda Decl., Ex. S; *cf. id.,* Ex. P (publishing Tribal appellate rules as of June 1, 2017), *with* https://nooksacktribe.org/departments/nooksack-tribal-court/ (not listing any Tribal appeals court or procedures).

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

private cause of action against a tribal official." *Id.* at 1278. "**The one exception to this holding is the ICRA's waiver of tribal immunity as to *habeas corpus* actions.**" *Alexander v. Salazar*, 739 F. Supp. 2d 1333, 1339 (E.D. Okla. 2010) (emphasis added); *see also Wilson v. Umpqua Indian Dev. Corp.*, No. 17-0123, 2017 WL 2838463, at *6 (D. Or. June 29, 2017) ("The ICRA narrowly waives tribes' immunity in federal court when violations of the ICRA are asserted through petitions for *habeas corpus*.").

The question is not one of immunity, as framed by Respondents, but of "custody." "The proper respondent in a federal *habeas corpus* petition is the petitioner's immediate custodian. A custodian is the person having a day-to-day control over the prisoner. That person is the only one who can produce 'the body' of the petitioner." *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (quotation omitted). Thus, in *Poodry v. Tonawanda Band of Seneca Indians*, it was held that "[a]n application for a writ of *habeas corpus* is never viewed as a suit against the sovereign, simply because the restraint for which review is sought, if indeed illegal, would be outside the power of an official acting in the sovereign's name." 85 F.3d 874, 899 (2d Cir. 1996). In *Reimnitz v. State's Attorney of Cook Cty.*, 761 F.2d 405, 408-409 (7th Cir. 1985), Judge Posner explains that's what is important "is not the quest for a mythical custodian, but that the petitioner name as respondent someone (*or some institution*) who has . . . the power to give the petitioner what he seeks if the petition has merit—namely, his unconditional freedom" (emphasis added). Nevertheless, to the extent that Respondents submit that the Tribe, as an institution, should be dismissed, Ms. Adams is fine with that—provided someone she has named give her the unconditional freedom she seeks.

With regard to those remaining respondents, some courts have held "that the proper respondent to a *habeas* petition is the custodian who can 'bring the party before the judge.'" *Valenzuela v. Silversmith*, No. 10-1127, 2011 WL 13284740, at *11 (D.N.M. Sept. 1,

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

2011), *aff'd*, 699 F.3d 1199 (10th Cir. 2012) (quoting *Pa. Bureau of Corr. v. U.S. Marshal Serv.*, 474 U.S. 34, 38 (1985)). Others have held that the proper respondent is, again, "someone (or some institution) who has both an interest in opposing the petition if it lacks merit, and the power to give the petitioner what he seeks if the petition has merit—namely, his unconditional freedom." *Liska v. Macarro*, No. 08-1872, 2009 WL 2424293, at *5 (S.D. Cal. Aug. 5, 2009) (quotation omitted); *see also Reimnitz*, 761 F.2d at 408-409 (citing *Hensley*, 411 U.S. at 351) (court itself is the proper respondent). Still others have held that "the official with authority to modify the tribal conviction or sentence" is the proper respondent. *Garcia v. Elwell*, No. 17-0333, 2017 WL 3172826, at *2 (D.N.M. May 25, 2017).

Here, Ms. Adams has named the Nooksack Tribal Court Clerks (who may administer orders to bring Petitioner before the judge, and who are in control of her $500 cash bail), the Nooksack Tribal Court itself (an institution that has an interest in opposing her Petition and the power to give Petitioner the relief she seeks), and Tribal Court Judges Raymond Dodge and Rajeev Majumdar (who possess authority to modify the orders detaining Petitioner).[62] In their Motion to Dismiss, Respondents point the finger a one another: Respondents appear to concede that Tribal Court Judges—Respondents Dodge and Majumdar—qualify as Ms. Adams' immediate custodians, but submit that neither the Tribal Court Clerks nor the Tribal Court itself similarly qualify.[63] Respondents Dodge and Majumdar, on the other hand, disagree and urge that either the Tribal Court itself or its Clerks are proper Respondents.[64]

Ms. Adams stands by her decision to name each Respondent. But as long as one of the named Respondents possesses authority to release Ms. Adams from custody, and "someone" among them gives her unconditional freedom, it does not really matter to her. Thus, to the extent

[62] Dkt. # 25-2.
[63] Dkt. # 25, at 10-11.
[64] Dkt. # 28, at 8-10.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

that Respondents wish to dismiss those Respondents who truly lack authority to release her from Tribal custody, Ms. Adams does not object—so long as the person(s) with the authority to grant *habeas* relief remains a Respondent.

A. THE TRIBAL EXHAUSTION DOCTRINE DOES NOT APPLY; COMITY IS UNWARRANTED

Respondents do not dispute the underlying merits of Ms. Adams' Petition—because they cannot. Instead, they submit that this Court does not possess jurisdiction to entertain her Petition because she has not availed herself of remedies available vis-à-vis the Tribal Court. Respondents are mistaken.

The "exhaustion rule" derives from the U.S. Supreme Court's holding in *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985). There, the High Court held that federal courts should refrain from considering the merits of a civil action involving an Indian tribe until available tribal remedies have been exhausted. *Id.* at 853-57. This exhaustion rule requires "that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987). The rule requires federal courts to allow tribal courts a full opportunity to determine the existence and extent of its own jurisdiction in the first instance, regardless of the basis of jurisdiction that may exist in federal court. *Id.* at 16. Once remedies have been fully exhausted, a tribal court's determination of tribal jurisdiction presents a federal question subject to consideration in federal court. *Yellowstone County v. Pease*, 96 F.3d 1169, 1172 (9th Cir.1996).

The exhaustion rule, however, is not jurisdictional as Respondents claim[65]—and it is not unyielding. "The Supreme Court has stated that the doctrine of abstention is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before

[65] Exhaustion is not, as Respondents misapprehend, "a jurisdictional requirement." Dkt. # 25, at 4; *cf. United States v. Ray*, No. 11-5056, 2011 WL 2490001, at *2 (W.D. Wash. Jun. 21, 2011) ("[E]xhaustion is required as a matter of comity and is not a jurisdictional prerequisite."). Given the record before this Court, as discussed above, the Nooksack Tribal Court does not deserve any form of comity.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

it," *United States v. Plainbull,* 957 F.2d 724, 727 (9th Cir. 1992) (quotation omitted), and that "mandatory deference does not follow automatically from an assertion of tribal court jurisdiction." *Crawford v. Genuine Parts Co., Inc.,* 947 F.2d 1405, 1407 (9th Cir.1991). Where exhaustion "is motivated by a desire to harass or is conducted in bad faith, **or** where the action is patently violative of express jurisdictional prohibitions, **or** where exhaustion would be futile," the exhaustion rule does not apply. *National Farmers Union,* 471 U.S. at 856 n.21 (citations omitted) (emphasis added). "Thus, a plaintiff may overcome the administrative exhaustion requirement by qualifying for one of the three aforementioned exceptions." *Roach v. HCAL Corp.*, No. 05-1212, 2005 WL 8173344, at *2 n.1 (S.D. Cal. Dec. 13, 2005). Here, Ms. Adams qualifies for all three; this Court need only find one exception to refuse to extend comity to the Nooksack Tribal Court in these facts.

1. The Nooksack Tribal Court Plainly Lacks Jurisdiction.

When it is "plain" that a tribal court lacks jurisdiction, "the otherwise applicable exhaustion requirement *must* give way." *Strate v. A-1 Contractors*, 520 U.S. 438, 459 n.14 (1997) (emphasis added). Here, there are at least three reasons that Respondents lack jurisdiction for purposes of exhaustion exception.

First, "the mandatory exhaustion requirement . . . does not apply when the dispute is not a 'reservation affair' and did not 'arise on the reservation,'" as here. *Crawford v. Genuine Parts Co.*, 947 F.2d 1405, 1407-08 (9th Cir. 1991). Without citing to evidence, Respondents submit that Ms. Adams was arrested by tribal police "on Nooksack tribal land."[66] The record evidence shows, however, that Ms. Adams was arrested at "7094 Mission Road Apartment #4 in Everson,

[66] Dkt. # 25, at 3. Respondent cites to "[reference]," but Petitioner is unsure as to what this is referring to. *Id.*

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

WA"—which is Nooksack allotted—not "tribal" or on-reservation—land and, in any event, is **not** located on within the exterior boundaries of the Nooksack Indian Reservation.[67]

Second, writ of *habeas corpus* is the appropriate relief where a Petitioner is arrested by officers with "no jurisdiction to arrest." *Campbell v. Waite*, 88 F. 102, 103 (8th Cir. 1898). It is clear, and has been for some time, that **"the powers of tribal law enforcement officers" do not extend "outside the reservation."** *Eriksen*, 259 at 1083. Ms. Adams' arrest "did not 'arise on the reservation,'" *Crawford*, 947 F.2d at 1407, and because Nooksack officers lacked jurisdiction to do anything but detain her, *Eriksen*, 259 P.3d at 1083, "the otherwise applicable exhaustion requirement *must* give way." *Strate*, 520 U.S. at 459 n.14 (1997) (emphasis added).[68]

Third, the Tribal Court never had subject matter jurisdiction over Ms. Adams' daughter and, thus, over criminal custodial interference charges against Ms. Adams. The Whatcom County Superior Court "never declined jurisdiction" over Z. A.G.; it still has "continuing and exclusive jurisdiction."[69] As such, the Tribal Court has plainly lacked subject matter jurisdiction in both the Tribal Court Parenting Action and the Tribal Court Criminal Matter that stemmed therefrom. *See In re Marriage of Greenlaw*, 869 P.2d 1024, 1027 (Wash. 1994) ("A Washington court which enters a child custody decree continues to have jurisdiction to modify that decree so long as one of the parties remains in the state and so long as the child's contact with the state continues to be more than slight.").

2. The Nooksack Tribal Court Is Not A Fair And Neutral Forum.

A tribal court acts in bad faith when it fails to provide "a fair and neutral proceeding." *Acres v. Blue Lake Rancheria*, No. 16-5391-WHO, 2017 WL 733114, at *3 (N.D. Cal. Feb. 24,

[67] Dkt. # 25-2, at 29; Galanda Decl., Ex. Q.

[68] The Washington State Supreme Court described the fix to these types of jurisdictional challenges as follows: "these issues must be addressed by use of political and legislative tools, such as cross-deputization or mutual aid pacts, to ensure that all law enforcement officers have adequate authority to protect citizens' health and safety in border areas." *Eriksen,* 259 at 1084. The Tribe and Whatcom County are aware of those tools, *see* Dkt. # 14, but have not deployed them to ensure the likes of Ms. Adams' health and safety.

[69] E.Adams Decl., Ex. F.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

2017); *see also Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa Inc.*, 715 F.3d 1196, 1201 (9th Cir. 2013) ("[I]t must be the Tribal Court that acts in bad faith to avoid the requirement to exhaust tribal court remedies."). To highlight the indicia of bad faith, Respondent Dodge:

- Initiated the Tribal Court Parenting Action *sua sponte* on March 20, 2017, despite being told of the Superior Court Parenting Order.[70]
- Has summoned Ms. Adams to his courtroom at least 21 times—almost monthly—since March of 2017, despite knowing he lacked jurisdiction from the beginning.[71]
- Denied Ms. Adams her due process right to counsel in the Tribal Court Parenting Action and the Tribal Court Criminal Matter; both since July 30, 2019.[72] *See Goldberg v. Kelly*, 397 U.S. 254, 270 (1970) ("[T]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel."); and
- Physically excluded Ms. Adams' counsel from the Nooksack Courthouse, also since July 30, 2019.[73]

Respondents claim that "Petitioner has not taken any action to avail herself o the tribal court remedies since her release rom the Whatcom County Jail on July 30, 2019."[74] That is too cute by half insofar as she has *repeatedly* been denied the right to legal counsel since July 30, 2019.[75] Practically speaking, there is no right for Ms. Adams to be heard in *habeas* at Nooksack with her lawyer illegally excluded from tribal courthouse. *Goldberg*, 397 U.S at 270.

All the while, it is not merely Ms. Adams claiming that the Tribal Court is not fair or neutral on Respondent Dodge's watch. NAICJA says Respondent Dodge does not conduct proceedings "in compliance with the federal ICRA or fundamental tenets of due process at

[70] E. Adams Decl., Ex. F.
[71] *Id.*, ¶12.
[72] Galanda Decl., Exs. J, K.
[73] Galanda Decl., ¶14.
[74] Dkt. # 25, at 3.
[75] Galanda Decl., Exs. J, K; ¶14.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

law."[76] The WSBA says Nooksack is "probably not worthy" of being called a 'justice system.'"[77] DOI has doubts that there is any "respect for the rule of law" at Nooksack.[78] And at last word from the Nooksack Court of Appeals: "at Nooksack the rule of law is dead."[79]

3. Exhaustion Would Be Futile.

"[I]f a functioning appellate court does not exist, exhaustion is per se futile." *Johnson v. Gila River Indian Cmty.*, 174 F.3d 1032, 1036 (9th Cir. 1999) (citing *Krempel v. Prairie Island Indian Community*, 125 F.3d 621, 622 (8th Cir. 1997)). At last public word about the Nooksack Court of Appeals, the Nooksack Tribe enjoined it out of existence—meaning the Tribe sued, and enjoined, its own appellate court.[80] There is no indication that any Nooksack appellate court has been brought back to life or, if it has, that is too is anything but unfair and biased.[81]

III. CONCLUSION

Ms. Adams' release is warranted because she has demonstrated a clear case on the merits, she is subject to severe restraints on her individual liberty, and all three of the exceptions to tribal court exhaustion apply to the facts of her case. Ms. Adams respectfully requests that her Petition for Writ of Habeas Corpus be GRANTED as to her ongoing detention and that Respondents be directed to release Ms. Adams from custody immediately.

A proposed Writ of Habeas Corpus accompanies this Response.

///

///

///

[76] Galanda Decl., Ex. M.
[77] *Id.*, Ex. N.
[78] *Id.*, Ex. O.
[79] *Id.*, Ex. Q at 2.
[80] *Id.*, Ex. L.
[81] *See* Galanda Decl., Ex. S; *cf. id.*, Ex. P (publishing Tribal appellate rules as of June 1, 2017), *with* https://nooksacktribe.org/departments/nooksack-tribal-court/ (not listing any Tribal appeals court or procedures).

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

DATED this 9th day of December 2019.

GALANDA BROADMAN, PLLC

s/Gabriel S. Galanda

Gabriel S. Galanda, WSBA #30331
Ryan D. Dreveskracht, WSBA #42593
Attorneys for Petitioner
P.O. Box 15146, Seattle, WA 98115
(206) 557-7509 Fax: (206) 299-7690
Email: gabe@galandabroadman.com
Email: ryan@galandabroadman.com

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

CERTIFICATE OF SERVICE

I, Wendy Foster, declare as follows:

1. I am now and at all times herein mentioned a legal and permanent resident of the United States and the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to testify as a witness.

2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35th Avenue NE, Ste. L1, Seattle, WA 98115.

3. Today, I electronically filed the foregoing with the clerk of the Court using the CM/ECF system which will send notification of such filing to the parties registered in the Court's CM/ECF system.

Signed at Seattle, Washington, this 9th day of December 2019.

s/Wendy Foster
Wendy Foster

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509